

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Revision of the Commission's Rules to Ensure
Compatibility with Enhanced 911 Emergency
Calling Systems

Choice Wireless, LC
Petition for Waiver of Section 20.18(c)
of the Commission's Rules and the
Deadlines Established in the
Fourth Report and Order

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

AMENDED PETITION FOR WAIVER AND QUARTERLY REPORT

Choice Wireless, LC ("Choice Wireless"), by its attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby amends its pending request for waiver² of Section 20.18(c) of the Commission's Rules and the June 30, 2002 deadline for compliance with 911 text telephone ("TTY") obligations for digital wireless carriers to seek a further extension.³ This relief is appropriate in light of the specific

¹ 47 C.F.R. §§ 1.3 and 1.925.

² See Choice Wireless LC Petition for Waiver of Section 20.18(c) of the Commission's Rules and the Deadlines Established in the Fourth Report and Order, CC Docket No. 94-102, filed June 21, 2002 ("Petition").

³ 47 C.F.R. § 20.18(c) (the "TTY Rule"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Report and Order*, CC Docket No. 94-102, FCC 00-436 (rel. Dec. 14, 2000) ("Fourth Report and Order").

circumstances facing Choice Wireless. Because good cause exists for grant of the instant waiver request, it should be granted.

I. Background

Choice Wireless is currently providing PCS service to the Lawton-Duncan, OK (BTA 248), Sherman-Denison, TX (BTA 418), Ardmore, OK (BTA 018), and Wichita Falls (BTA 473) markets. This service area includes twelve counties in Texas and eleven in Oklahoma. Choice Wireless has chosen to implement GSM technology in its network and selected Airnet as its infrastructure vendor. Airnet's GSM technology was chosen because of its cost-effectiveness and its ability to support future wireless Internet services.⁴

II. Waiver is Warranted

The relevant standard for grant of waiver of the Commission's Rules is that "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."⁵ Choice Wireless' waiver request satisfies this standard.

A. Choice Wireless Confronts Unique and Unusual Circumstances

Choice Wireless is dependent upon Airnet, as well as handset manufacturers, to

⁴ See, "Airnet Communications Awarded \$4.2 Million Order by Choice Wireless to Expand PCS Coverage," Airnet Press Release, July 12, 2000 www.airnetcom.com (quoting Mike Clough, former CEO of the managing agent of Choice Wireless as stating, "Airnet's GSM infrastructure solution more than doubles our cost-savings as we expand our network. . . . In addition, AirNet gives us a broadband, software-defined solution that is easily upgraded to support future wireless Internet services").

⁵ 47 C.F.R. § 1.925(b)(3)(ii).

make its digital system compatible with TTY devices. Airtel utilizes software defined radio (“SDR”) technology.⁶ This technology utilizes spectrum to deliver traffic from remote “base stations” to a “centralized broadband, software-defined base station.”⁷ The centralized base station or “BTS” has twelve radio frequency (“RF”) carriers.⁸ The BTS is linked to a “base station controller” (“BSC”) by a T1 or microwave link.⁹ According to an Airtel publication, this network configuration eliminates the expense, typically incurred by wireless operators, by using only one T1 line or microwave link rather than multiple T1s or links to “backhaul” traffic from base stations to cell sites.¹⁰

The quote that Airtel has provided to Choice Wireless for its TTY solution reflects this unique network configuration. Choice Wireless’ network utilizes two BSCs

⁶ See, “FCC Report Recognizes Importance of Software Defined Radios (“SDR”); Airtel Continues to Leverage SDR Competencies,” Airtel Press Release, October 18, 2001 www.airtel.com.com (Airtel press release stating that the company first developed base stations incorporating SDR technology in 1994 and that at the time the press release was written, it was “the only supplier of commercially available and deployed base stations incorporating broadband SDR technology” for GSM networks).

⁷ “Filling the Generation Gap with Software-Defined, Broadband Radio” by Bennet Wong, CTI Vol 4, No. 9 <http://www.aircom.com/cti-reprint.pdf>.

⁸ “Eliminate the Backhaul Link,” Airtel Press Release, October 1, 1999 www.airtel.com.com (Airtel press release explaining that “[a] 12-carrier GSM base station can support 11 remote 8-channel GSM base stations leaving one carrier (eight channels) on the broadband BTS for local traffic”).

⁹ *Id.*

¹⁰ *Id.*; see *In the Matter of Authorization and Use of Software Defined Radios: First Report and Order*, ET Docket No. 00-47, FCC 01-264 (rel. Sept. 14, 2001) at para. 3 (FCC noting that SDR is “a significant technological advancement from traditional radios where technical characteristics are fixed at the time of manufacture and subsequently cannot be easily modified”).

and 168 RF carriers. Airnet's quote includes \$170,000 for the two BSCs and \$168,000 for the RF carriers.¹¹ When Choice Wireless selected Airnet as its infrastructure provider a few years ago, it was unaware that the cost of the TTY solution would be so unreasonable. It was not until April 2002, only months before the June 30, 2002 TTY compliance deadline, that Airnet informed Choice Wireless that a solution would not be generally available by the deadline¹² and provided the company with the quote. Subsequently, Choice Wireless sought waiver of the deadline.

Airnet, however, did not meet this deployment deadline.¹³ As of the date of this filing, Airnet continues to inform the company that it has yet to receive an order for the software it intends to use for TTY compliance; accordingly, the software has yet to be tested in a development environment. Choice Wireless has found that other Airnet customers are unable to place orders for the TTY solution because of the prohibitively

¹¹ Due to the modular software defined architecture of the Airnet GSM system, the Airnet TTY solution requires upgrades to each BSC at \$85,000 per BSC and to each RF carrier at \$1,000 per carrier. Accordingly, the solution's cost is substantially higher for carriers such as Choice Wireless that cover a large geographic area, and these costs continue to grow as the company adds new equipment. Compounding this cost is the uncertainty regarding the viability of a solution that has yet to be tested.

¹² See *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Order*, CC Docket No. 94-102, DA 02-1540 at paras. 6 & 17 (rel. June 28, 2002) ("TTY Waiver Order") (Commission noting that TMP Corp. and TMP Jacksonville, LLC sought waiver of the TTY Rule because their infrastructure vendor, Airnet, will not have a technical solution for GSM networks available until the fourth quarter 2002 and granting the waiver request).

¹³ See Choice Wireless TTY Status Report, filed January 15, 2003 (noting that in December 2002, "Airnet informed Choice Wireless that the vendor had not yet received an order for the software it intends to use for TTY compliance, thus the software has yet to be tested").

expensive rates that Airnet is charging individual customers for implementation. For example, the quote Airnet provided to Choice Wireless to implement the software once it has been tested remains above \$338,000, an amount equivalent to the cost of its switch. In an effort to persuade Airnet to provide the necessary software at more reasonable prices, Choice Wireless and other Airnet customers met with Airnet representatives earlier this year. As of this date, however, Choice Wireless understands that Airnet has not made any reduction in the price it will charge its customers for the software.¹⁴

As stated in its most recent TTY Quarterly Report, Choice Wireless has explored the option of replacing the Tecore switch used by Airnet with a TTY-compliant switch.¹⁵ From conversations with Airnet representatives, Choice Wireless understands that the two BSCs and the 168 RF carriers still would require upgrades even if the switch were replaced. Accordingly, the company has determined that neither option – purchasing the Airnet solution or replacing Airnet facilities with a TTY compatible switch – is economically feasible at this time.

Choice Wireless has not yet operated in a positive cash flow position. Although it recently has begun to see improvement, it is nonetheless still experiencing financial

¹⁴ See, TMP Corp. and TMP Jacksonville, LLC Request for Further Extension of TTY Requirements filed June 26, 2003 at 2 (stating that, to the carriers' knowledge, Airnet has yet to receive a "First Office Application" of the software and quoting an Airnet representative as stating that "it seems like the price to value is just not there for the small to medium service providers").

¹⁵ See Choice Wireless, LC Second Quarter 2003 TTY Status Report - CC Docket No. 94-102, filed July 15, 2003 ("Second Quarter Report").

hardships.¹⁶ The company has sought financing from a number of sources, including Airnet, but to date, has been unsuccessful in these efforts. In short, the company is unable to obtain the necessary capital to purchase the Airnet TTY solution or replace the Airnet facilities.¹⁷

C. Grant of the Waiver Would Further the Public Interest

Choice Wireless seeks waiver to the extent that these requirements cannot be accomplished in a technically and economically feasible way. Accordingly, Choice Wireless seeks an extension of the deadline until it is able to obtain the necessary financing to allow it to implement a TTY solution in the most efficient and expeditious manner. Such an extension would allow time for continued negotiations to reduce the cost of the upgrades,¹⁸ for Airnet to complete product testing, and for Choice Wireless to install and test the TTY solution in its network.¹⁹ During the extension period, Choice

¹⁶ For example, in order to continue operations and satisfy its current on-going obligations, the company has ceased purchasing equipment and has redeployed cell sites in order to satisfy demand in more populated areas which are experiencing call blocking.

¹⁷ The company will provide financial information under seal if requested. Migrating to another switch vendor is not currently a viable option, because not only will the company incur additional costs, which it has no means of financing, but it would also be forced to abandon the \$11 million investment it has already made in Airnet equipment, which includes the Tecore switch. Choice Wireless understands that Airnet does not routinely relicense used equipment, thereby eliminating the opportunity to salvage any value. Accordingly, costs to replace the switch would be compounded by loss of investment in facilities and equipment.

¹⁸ As noted in its Second Quarter Report, Choice Wireless anticipates that the potential loss of customers will place additional pressure on Airnet to provide the software at reasonable prices.

¹⁹ See Fourth Report and Order at para. 8 (Commission recognizing that “a number of things must be done to ensure the solution works properly within a digital wireless

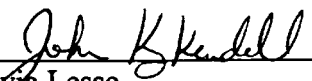
Wireless would continue to submit quarterly progress reports to keep the Commission apprised of progress towards compliance.²⁰ The company also will inform subscribers through billing inserts of the system's TTY limitations and continue to train employees as to how to explain the delay to potential new customers who use TTY devices.²¹

III. Conclusion

Grant of this waiver request is appropriate in light of the circumstances. To advance the public interest, Choice Wireless will provide the Commission with periodic status reports during the extension period and inform subscribers of the limits on their use of the TTY capability on Choice Wireless' network. Accordingly, the Commission should grant the instant wavier request.

Respectfully submitted,

CHOICE WIRELESS

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system" once the solution is made generally available and allowing for an additional six months to integrate, test and deploy the technology).

²⁰ The company is not aware of any person seeking to use a TTY device on its network. At least four competitors provide wireless service in Choice Wireless' service area. Accordingly, the public would not be harmed by an extension of the deadline because alternative access to TTY exists.

²¹ See TTY Waiver Order at para. 25.

DECLARATION OF ALAN ROHMER

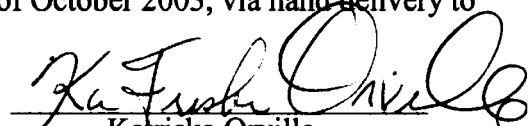
I, Alan Rohmer, Chief Financial Officer of Choice Wireless, LC, do hereby declare under penalty of perjury that I have read the foregoing "Amended Petition for Waiver and Quarterly Report" and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.


Alan Rohmer

Date: 10-21-03

CERTIFICATE OF SERVICE

I, Katriska Orville, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Amended Petition for Waiver and Quarterly Report" was served on this 21st day of October 2003, via hand delivery to the following parties:


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